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Patent
Attorney Docket No.GEMS8081.215

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of	:	Timo Schirmer
Serial No.	:	10/709,613
Filed	:	May 18, 2004
For	:	Method and System of Scaling MR Spectroscopic Data Acquired with Phase-Array Coils
Group Art No.	:	2859
Examiner	:	Fetzner, T.

CERTIFICATION UNDER 37 CFR 1.8(a) and 1.10

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Date: March 20, 2006

Jessica A. Calloway
Signature

Commissioner for Patents
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PRE-APPEAL BRIEF REQUEST FOR REVIEW

Dear Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. The request is being filed with a Notice of Appeal. The review is requested for the reasons set forth hereinafter.

REMARKS

Claims 1-20 are pending in the present application. In the Final Office Action mailed December 21, 2005, the Examiner has maintained the rejection of claims 1-20 as being anticipated by Frigo et al.

In sustaining the rejection, the Examiner "notes that because RF whole body coil 56 is functionally capable of receiving NMR MRS signals, RF body coil 56, and the separate RF surface coil, ... etc., are each considered to be included within the scope of Frigo et al.'s receiving coils from which reference data are acquired for each receiving coil." Office Action, December 21, 2005, p. 8. The Examiner reached this conclusion notwithstanding that Frigo et al. fails to teach or suggest the acquisition of a reference signal with a body coil and the acquisition of metabolite signals with a plurality of receive coils wherein one of the coils is a body coil.

Frigo et al. discloses an MR system having a body coil; however, Frigo et al. discloses "a system and method for multi-channel MR spectroscopy (MRS) [that] includes simultaneously acquiring MR signals from multiple coils and processing the MR signals individually to generate multiple sets of MRS results." Abstract. Frigo et al. further teaches that its invention "relates generally to magnetic resonance spectroscopy (MRS) and, more particularly, to a system and method for multiple receiver photon spectroscopy such that a single absorbance spectrum is generated as a combination of data received from multiple receiver coils." Col. 1, lns. 6-11. In this regard, Frigo et al. discloses that an "MRS scan includes a reference data acquisition in which a signal is acquired from a region or volume of interest." Col. 5, lns. 7-9. However, contrary to the conclusions reached by the Examiner, the reference fails to teach or suggest the acquisition of such reference data with a body coil or that the body coil is used as part of the "multiple receive coils".

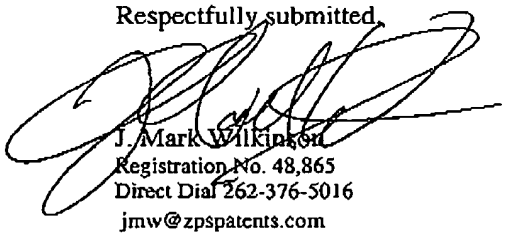
At best, Frigo et al. may suggest using the body coil as one of a multitude of receive coils. While Applicant does not believe Frigo et al. makes such a suggestion, the Examiner's application of Frigo et al., at best, amounts to a 35 U.S.C. §103 obviousness rejection. The Examiner, in fact, admits as much. Specifically, the Examiner stated that the body coil and the separate surface coil "are each considered to be included within the scope of Frigo et al.'s receiving coils." Office Action, December 21, 2005, p. 8 (emphasis added). Accordingly, the Examiner has interpreted Frigo et al. to not specifically teach the claimed invention, but, at best, suggest the claimed invention. As such, at a minimum, the Examiner has admitted that the reference does not anticipate the claimed invention.

Also, while Applicant does not believe that Frigo et al. suggests the claimed invention as being obvious; nevertheless, the reference cannot be used in a §103 rejection as the inventors of the present application were obligated to assign their rights in the invention to the same assignee of Frigo et al. More particularly, as acknowledged by the Examiner, Frigo et al. only qualifies as prior art under 35 U.S.C. §102(e), therefore, the reference cannot be cited against the present application in a §103 rejection if it can be shown that the inventors of the present application were obligated to assign their rights to the present application to GE Medical Systems Global Technology Co., LLC, a wholly owned subsidiary of General Electric Company, assignee of Frigo et al. As such, Applicant refers the Examiner to the assignment recorded at Reel/Frame 014722/0458 which establishes the present invention and Frigo et al. were commonly owned. The assignee of the present application is General Electric Co., of which GE Medical Systems Global Technology Co., LLC is a wholly owned subsidiary thereof.

Accordingly, while Applicant believes that the claimed invention is neither disclosed nor suggested by Frigo et al. The Examiner's position, at best (and with a real stretching of the interpretive bounds of Frigo et al.), relies on the interpretation that the reference may "suggest" the claimed invention for the purposes of a §103 rejection. However, the reference is disqualified as prior art under 35 U.S.C. §103(c). As set forth above, however, Applicant unequivocally believes that Frigo et al. neither teaches nor discloses the claimed invention.

Therefore, in light of at least the foregoing, Applicant respectfully believes that the present application is in condition for allowance. As a result, Applicant respectfully requests pre-appeal review of the outstanding final rejections.

Respectfully submitted,



J. Mark Wilkinson
Registration No. 48,865
Direct Dial 262-376-5016
jmw@zpspatents.com

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Attorney Docket No.: GEMS8081.215

P.O. ADDRESS:
Ziolkowski Patent Solutions Group, SC
14135 North Cedarburg Road
Mequon, WI 53097-1416
262-376-5170